



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: DECEMBER 22, 2022

IN THE MATTER OF:

Appeal Board No. 606000

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 606000 and 606001, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed March 21, 2019, which sustained the employer's objection that the claimant ("HK") and all other black car drivers similarly situated were independent contractors and not employees, and overruled the determination holding ("JUNO") liable for contributions, effective October 1, 2015, based on remuneration paid to the claimant HK and to all other black car drivers similarly situated as employees.

At the combined hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were on behalf of JUNO and the Commissioner of Labor.

The Board considered the arguments contained in the written statements submitted on behalf of the

Commissioner of Labor and JUNO.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: JUNO is a platform black car livery service. Drivers such as HK found JUNO through word of mouth. Drivers go online and request 'on-boarding'. Drivers set up appointments with JUNO. JUNO only accepts drivers with ride sharing experience and a rating of 4.8 or higher. The driver is required to produce a driver's license with his Taxi and Limousine Commission license, insurance cards, vehicle registration card and the vehicle

itself. JUNO inspects the cars to ensure that they are not 'compact' cars.

The driver is required to sign a Driver's Agreement which provides in part that the application device access can be suspended at JUNO's discretion and that failure to return the device will result in a withdrawal of the cost of the device from the driver's bank account. The driver agrees to maintain the minimum acceptance rate of rides set by JUNO. JUNO prohibits ride sharing; picking up a non-JUNO rider results in non-payment to the driver. The driver must maintain an acceptable rider rating set by JUNO. JUNO reserves the right to charge rider fees for auxiliary services which are not shared by the driver. JUNO reserves the right to adjust payment for rides or cancel payment for rides. Corrections to a rider's receipt must be sent to JUNO within 3 days. Drivers have 14 days in which to contact Juno for errors in earnings. JUNO reserves the right to change terms and conditions of the agreement without notice and tells drivers to check the agreement periodically for changes.

Further, by the Agreement, JUNO requires that all drivers maintain a valid license with appropriate certification, permits, maintain training, expertise, high standard of professionalism, courtesy, comply with governmental requirements. JUNO reserves the right to conduct credit checks on the drivers. JUNO requires that third party accounts be disclosed. JUNO requires access to TLC/DMV records. JUNO requires that drivers have a valid TLC "for hire" vehicle decal and an EZ Pass. JUNO requires that the vehicle be in clean and sanitary condition. The driver agrees to name JUNO's black car base as an additional insured and provide proof of insurance. JUNO reserves the right to suspend the driver for any violation of the agreement, including failure to maintain license or insurance, unsafe driving, dishonesty, fraud, misconduct or misuse of the proprietary information of the June platform service. The driver is prohibited from providing service to a JUNO rider if the agreement is terminated. The driver is also prohibited from working for a competitor for one year after ending the agreement with JUNO.

Drivers chose the time and location they are willing to work. Drivers are assigned to a fare by proximity to the passenger. JUNO provides a cell phone device with the dispatch application and GPS. JUNO provides a logo for a driver's vehicle.

If a driver accepts a fare, he is provided with the location. The driver picks the route. If the route is not approved by JUNO, JUNO can adjust the fee. JUNO

provides a mapping device in the application device. The employer sets the price of the ride based on market price. Drivers are paid a percentage of the fare and keep 100 percent of tips. This rate is set by JUNO. Drivers are not allowed to take cash payments. Tips are distributed by JUNO through a payment processor, with the driver's percentage of the fares on a weekly basis.

Drivers are prohibited from contacting the processor directly. Payments are made directly to the driver's bank account. No taxes are withheld. The TLC black car fund surcharge is added to the fare. Drivers do not receive fringe benefits. The cost of any tolls is charged to the rider. Drivers pay for gas and maintenance of the vehicle. Any fees for tickets/summons, and mobile device usage charges are deducted by JUNO from a driver's pay.

Complaints are referred to JUNO's 24-hour customer service department. If there is a complaint, the driver is not paired with the rider again. If the driver's vehicle is damaged by a rider, JUNO handles compensation/reimbursement requests by the drivers. Drivers are allowed to have a helper if the helper signs the driver agreement with Juno and has a valid TLC license.

OPINION: The credible evidence establishes that JUNO exercised, or reserved the right to exercise sufficient supervision, direction or control over HK's, and other similarly situated drivers, to hold an employment relationship under the Unemployment Insurance Law. Notably, JUNO requires that it be included as an additional insured on the driver's policy; requires that the driver provide access to the driver's TLC and DMV records for inspection; requires that the vehicles be in clean and sanitary condition; checks for ticket infractions and penalizes drivers for failure to pay fines by deducting the fine amount from the drivers pay; determines the

rate of the drivers' earnings by setting the commission rate and deducting incidental charges; determines the rate of fares and reserves the sole right to change the fare amounts; requires that the drivers maintain an amount of ride acceptance set by JUNO at its discretion; provides the dispatcher application device; provides a company logo for driver's use; engages in GPS tracking; and can change the fare charge if it disagrees with the route taken by the driver. Also, JUNO reserves the right to end the contract for driver misconduct; prohibits a driver from providing service to a JUNO rider if the agreement is ended; and prohibits the driver from working for a competitor for one year after the agreement is ended.

This case is similar to Matter of Vega [Postmates], 35 NY3d 131 (2020) and Matter of Lowry [Uber Technologies, Inc.], 2020 NY Slip Op 07645, both dealing with platform company drivers. The Court found it significant that those companies provided a navigation system; tracked the drivers location; took customer requests for rides; controlled the amount of the fare charged; collected the fare; set the drivers' rate of compensation; precluded certain driver behaviors; and used a rating system to encourage and promote acceptable behavior. In both cases, the Court found that the drivers were employees notwithstanding that the drivers owned their own cars; were provided with riders through an application; and decided their own hours and their own routes.

This case is also similar to other limousine/black car drivers held to be employees of luxury transportation service providers. See, Matter of Kim [SUK Incorporated, DBA Rainbow Limousine], 127 AD3d 1487 (3d Dept 2015); Matter of Khan [Mirage Limousine Service Inc.], 66 AD3d1098 (3d Dept 2009); Matter of Odyssey Transportation LLC, 62 AD3d 1175 (3d Dept 2009); Matter of Automotive Service Systems Inc., 56 AD3d 854 (3d Dept 2008); Matter of Spectacular Limo Link Inc., 21 AD3d 1172 (3d Dept 2005); Matter of De Paiva [Olympic Limousine Inc.], 270 AD2d 534 (3d Dept 2000); Matter of Kidder Jr.[Classic Airport Share-Ride Ltd.], 255 AD2d 852 (3d Dept 1998); Matter of Jarzabek [NYC Two Way Inc.], 235 AD2d 878 (3d Dept 1997); Matter of Freidenberg [Limousine Resources Management Corp.], 235 AD2d 866 (3d Dept 1997); Appeal Board No. 583937; Appeal Board No. 582077; Appeal Board No. 577078; Appeal Board No. 565422; and Appeal Board No. 555109.

To the extent that JUNO's witness testimony differs from the provisions within the Driver's Agreement, we accept the agreement as more representative of the relationship between the drivers and JUNO, as the driver cannot work for JUNO if the driver does not sign the agreement.

Under the totality of the circumstances, the claimant and any other black car drivers

similarly situated were employees in covered employment for purposes of unemployment insurance. Accordingly, the employer's objections should be overruled, and the determination of liability for unemployment insurance tax contributions should be sustained.

DECISION: The decisions of the Administrative Law Judge are reversed.

The employer's objection, objection that the claimant ("HK") and all other black car drivers similarly situated were independent contractors and not employees, is overruled.

The determination, holding ("JUNO") liable for contributions, effective beginning the fourth quarter of 2015, based on remuneration paid to the claimant HC and to all other black car drivers similarly situated as employees, is sustained.

RANDALL T. DOUGLAS, MEMBER